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10 Attorneys for Defendants
NATIONAL INVESTMENT CONSULTANTS, INC.,
11 PACIFIC BEST GROUP LTD, a.k.a. PACIFIC BEST
COMPANY LTD, a British Virgin Islands Corporation,
12 WEI M. TSE a.k.a. RAYMOND TSE, and for
13 Relief Defendant THERESA C. WONG

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DIVISION OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

16 U.S. COMMODITY FUTURES TRADING
17 COMMISSION and THE COMMISSIONER OF
CORPORATIONS OF THE STATE OF
18 CALIFORNIA,

19 Plaintiffs,

20 vs.

21 NATIONAL INVESTMENT CONSULTANTS,
INC, a California corporation, PACIFIC BEST
22 GROUP LTD, a.k.a. PACIFIC BEST COMPANY
LTD, a British Virgin Islands Corporation, YI
23 KERRY XU, an individual, RUN PING ZHOU
a.k.a. FLORA ZHOU, an individual, and WEI M.
24 TSE a.k.a. RAYMOND TSE, an individual,

25 Defendants,

CASE NO.: 052641 JSW

**DEFENDANT PACIFIC BEST GROUP
LTD, a.k.a. PACIFIC BEST
COMPANY LTD'S ANSWER TO
PLAINTIFFS' COMPLAINT**

JURY TRIAL DEMANDED

**Judge: Hon. Jeffrey S. White
Complaint Filed: June 29, 2005**

1 And
2 THERESA C. WONG, an individual,
3 Relief Defendant.
4

5 **ANSWER**

6 Defendant PACIFIC BEST GROUP LTD, a.k.a. PACIFIC BEST COMPANY LTD, a
7 British Virgin Islands Corporation ("Defendant") answers the allegations contained in Plaintiffs'
8 Complaint as follows:

9 **I. SUMMARY**

10 1. Answering paragraph 1 of the Complaint, Defendant denies each and every
11 allegation contained therein.

12 2. Answering paragraph 2 of the Complaint, Defendant denies that it has made
13 material misrepresentations and/or omissions or that it has engaged in acts or practices in violation
14 of the Commodity Exchange Act's anti-fraud provisions. The remaining allegations of paragraph
15 2 state legal conclusions to which no answer is required. To the extent an answer is required,
16 Defendant denies that Plaintiffs have completely or accurately characterized the law.

17 3. Paragraph 3 of the Complaint states legal conclusions to which no answer is
18 required. To the extent an answer is required, Defendant denies the allegations of this paragraph
19 of the Complaint.

20 4. Paragraph 4 of the Complaint states legal conclusions to which no answer is
21 required. To the extent an answer is required, Defendant denies the allegations of this paragraph
22 of the Complaint.

23 5. Answering paragraph 5 of the Complaint, Defendant denies each and every
24 allegation contained therein.

25 **II. JURISDICTION**

26 6. Paragraph 6 of the Complaint states legal conclusions to which no answer is
27 required. To the extent an answer is required, Defendant denies the allegations of this paragraph
28 of the Complaint.

1 7. Paragraph 7 of the Complaint states legal conclusions to which no answer is
2 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
3 accurately characterized the law.

4 8. Paragraph 8 of the Complaint states legal conclusions to which no answer is
5 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
6 accurately characterized the law.

7 9. Paragraph 9 of the Complaint states legal conclusions to which no answer is
8 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
9 accurately characterized the law.

10 **III. INTRADISTRICT ASSIGNMENT AND VENUE**

11 10. Paragraph 10 of the Complaint states legal conclusions to which no answer is
12 required. To the extent an answer is required, Defendant admits that at least one individual
13 defendant lives in the District, but otherwise Defendant denies the allegations of this paragraph of
14 the Complaint.

15 **IV. THE PARTIES**

16 **A. Plaintiffs**

17 11. Paragraph 11 of the Complaint states legal conclusions to which no answer is
18 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
19 accurately characterized the law.

20 12. Paragraph 12 of the Complaint states legal conclusions to which no answer is
21 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
22 accurately characterized the law.

23 **B. Defendants**

24 13. Answering paragraph 13 of the Complaint, Defendant admits that Pacific Best
25 Group Ltd., a.k.a. Pacific Best Company Ltd. is or was a British Virgin Islands Company with a
26 registered office situated at P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola,
27 British Virgin Islands. Defendant further admits that Tse was an employee of Pacific Best and that
28 Pacific Best through NICI opened accounts for customers to trade foreign currency. Defendant

1 admits that Pacific Best has never been registered with the Commission or the State of California.
2 Except as so admitted, Defendant denies each and every allegation contained in Paragraph 13.

3 14. Answering paragraph 14 of the Complaint, Defendant admits that National
4 Investment Consultants, Inc., was incorporated in California on February 2, 2004 and has its
5 principal place of business at 300 Montgomery Street, Suite 660, in the City and County of San
6 Francisco. Defendant admits that NICI's website is located at www.nationalinv.com and that the
7 website stated that NICI was "the communication link between customers and Pacific Best
8 Company Ltd." Defendant admits that NICI has never been registered with the Commission or the
9 State of California. Except as so admitted, Defendant denies each and every allegation contained
10 in Paragraph 14.

11 15. Answering paragraph 15 of the Complaint, Defendant admits that South China
12 Investments, Inc., was incorporated in California on November 9, 2000 and had its principal place
13 of business at 300 Montgomery Street, Suite 730, in the City and County of San Francisco.
14 Defendant lacks sufficient information or knowledge as to the remainder of the allegations
15 contained in paragraph 15 and, on that basis denies the allegations set forth in Paragraph 15 of the
16 Complaint.

17 16. Answering paragraph 16 of the Complaint, Defendant is informed and believes, and
18 therefore, on this basis, admits the allegation that Xu is a California resident and that she was an
19 employed as an account executive with NICI for a period of time. As to the remainder of the
20 allegations contained in paragraph 16 of the Complaint, Defendant lacks sufficient knowledge or
21 information to form a belief as to their truth or falsity, and on that basis denies the remainder of the
22 allegations contained in paragraph 16.

23 17. Answering paragraph 17 of the Complaint, Defendant is informed and believes, and
24 therefore, on this basis, admits the allegation that Zhou is a California resident. As to the
25 remainder of the allegations contained in paragraph 17 of the Complaint, Defendant lacks
26 sufficient knowledge or information to form a belief as to their truth or falsity, and on that basis
27 denies the remainder of the allegations contained in paragraph 17, except to the extent Exhibit A to
28 Plaintiffs' Complaint speaks for itself.

1 18. Answering paragraph 18 of the Complaint, Defendant is informed and believes, and
 2 therefore, on this basis, admits the allegation that Tse is a California resident and his last known
 3 address is 88 Howard Street #809, San Francisco, California. Defendant admits that Tse has never
 4 been registered with the Commission or the State of California. Except as so admitted, Defendant
 5 denies each and every allegation contained in Paragraph 18.

6 **C. Relief Defendant**

7 19. Answering paragraph 19 of the Complaint, Defendant is informed and believes, and
 8 therefore, on this basis, admits the allegation that Wong is a California resident and that her last
 9 known address is 88 Howard Street #809, San Francisco, California. Defendant admits that Wong
 10 has never been registered with the Commission or the State of California. Except as so admitted,
 11 Defendant denies each and every allegation contained in paragraph 19.

12 **V. FACTUAL BACKGROUND**

13 20. Answering paragraph 20 of the Complaint, Defendant admits that Tse was an
 14 employee of Pacific Best and that Pacific Best, through NICI, opened accounts for customers to
 15 trade foreign currency. Except as so admitted, Defendant denies each and every allegation
 16 contained in Paragraph 20.

17 21. Answering paragraph 21 of the Complaint, Defendant denies each and every
 18 allegation contained therein.

19 22. Answering paragraph 22 of the Complaint, Defendant admits that NICI's website is
 20 located at www.nationalinv.com and that the website stated that NICI was "the communication
 21 link between customers and Pacific Best Company Ltd" and also stated that NICI has over 30
 22 years of management and trading experience. Except as so admitted, Defendant denies each and
 23 every allegation contained in Paragraph 22.

24 23. Answering paragraph 23 of the Complaint, Defendant denies each and every
 25 allegation contained therein.

26 24. Answering paragraph 24 of the Complaint, Defendant admits that NICI placed
 27 advertisements for employment in the *Sing Tao* newspaper. Except as so admitted, Defendant
 28 denies each and every allegation contained in Paragraph 24.

1 25. Answering paragraph 25 of the Complaint, Defendant admits that employees and/or
2 agents of NICI, included persons who became employees and/or agents of NICI, are or were
3 provided with training on how to trade foreign currency. Except as so admitted, Defendant denies
4 each and every allegation contained in Paragraph 25.

5 26. Answering paragraph 26 of the Complaint, Defendant denies each and every
6 allegation contained therein in their entirety.

7 27. Answering paragraph 27 of the Complaint, Defendant denies each and every
8 allegation contained therein in their entirety.

9 28. Answering paragraph 28 of the Complaint, Defendant lacks sufficient information
10 and knowledge and on that basis deny each and every allegation contained therein in their entirety.

11 29. Answering paragraph 29 of the Complaint, Defendant admits that employees of
12 NICI are provided with training on how to trade foreign currency. Except as so admitted,
13 Defendant denies each and every allegation contained in Paragraph 29 in their entirety.

14 30. Answering paragraph 30 of the Complaint, Defendant denies each and every
15 allegation contained therein.

16 31. Answering paragraph 31 of the Complaint, Defendant denies each and every
17 allegation contained therein.

18 32. Answering paragraph 32 of the Complaint, Defendant denies each and every
19 allegation contained therein.

20 33. Answering paragraph 33 of the Complaint, Defendant admits that Tse received a
21 check for \$20,000 from a customer. Except as so admitted, Defendant denies each and every
22 allegation contained in Paragraph 33 in their entirety.

23 34. Answering paragraph 34 of the Complaint, Defendant denies each and every
24 allegation contained therein in their entirety.

25 35. Answering paragraph 35 of the Complaint, Defendant denies each and every
26 allegation contained therein in their entirety.

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1 36. Answering paragraph 36 of the Complaint, Defendant lacks sufficient knowledge or
2 information to form a belief as to their truth or falsity, and on that basis denies each and every
3 allegation contained in paragraph 36.

4 37. Answering paragraph 37 of the Complaint, Defendant lacks sufficient knowledge or
5 information to form a belief as to their truth or falsity, and on that basis denies each and every
6 allegation contained in paragraph 37.

7 38. Answering paragraph 38 of the Complaint, Defendant denies each and every
8 allegation contained therein.

9 39. Answering paragraph 39 of the Complaint, Defendant denies each and every
10 allegation contained therein.

11 40. Paragraph 40 of the Complaint states legal conclusions to which no answer is
12 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
13 accurately characterized the law.

14 41. Paragraph 41 of the Complaint states legal conclusions to which no answer is
15 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
16 accurately characterized the law.

17 42. Paragraph 42 of the Complaint states legal conclusions to which no answer is
18 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
19 accurately characterized the law.

20 43. Paragraph 43 of the Complaint states legal conclusions to which no answer is
21 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
22 accurately characterized the law.

23 44. Answering paragraph 44 of the Complaint, Defendant admits that Wong shares an
24 address with Tse and that she was employed as an accountant for Pacific Best. Except as so
25 admitted, Defendant denies each and every allegation contained in Paragraph 44 in their entirety.

26 45. Answering paragraph 45, which merely incorporates other paragraphs of the
27 Complaint by reference, Defendant refers to and incorporate, by this reference paragraphs 1
28 through 44, of this Answer, as though set forth here.

1 46. Paragraph 46 of the Complaint states legal conclusions to which no answer is
2 required. To the extent an answer is required, Defendant denies the allegations of this paragraph
3 of the Complaint.

4 47. Paragraph 47 of the Complaint states legal conclusions to which no answer is
5 required. To the extent an answer is required, Defendant denies the allegations of this paragraph
6 of the Complaint.

7 48. Answering paragraph 48, which merely incorporates other paragraphs of the
8 Complaint by reference, Defendant refers to and incorporates by this reference paragraphs 1
9 through 47, of this Answer, as though set forth here.

10 49. Answering paragraph 49 of the Complaint, Defendant denies each and every
11 allegation contained therein.

12 50. Answering paragraph 50 of the Complaint, Defendant denies each and every
13 allegation contained therein.

14 51. Answering paragraph 51, which merely incorporates other paragraphs of the
15 Complaint by reference, Defendant refers to and incorporates by this reference paragraphs 1
16 through 50, of this Answer, as though set forth here.

17 52. Answering paragraph 52 of the Complaint, Defendant denies each and every
18 allegation contained therein in their entirety.

19 53. Answering paragraph 53 of the Complaint, Defendant denies each and every
20 allegation contained therein in their entirety.

21 54. Answering paragraph 54 of the Complaint, Defendant denies each and every
22 allegation contained therein in their entirety.

23 55. Answering paragraph 55 of the Complaint, Defendant denies each and every
24 allegation contained therein.

25 56. Answering paragraph 56 of the Complaint, Defendant denies each and every
26 allegation contained therein
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1 57. Answering paragraph 57, which merely incorporates other paragraphs of the
2 Complaint by reference, Defendant refers to and incorporates by this reference paragraphs 1
3 through 57, of this Answer, as though set forth here.

4 58. Paragraph 58 of the Complaint states legal conclusions to which no answer is
5 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
6 accurately characterized the law.

7 59. Paragraph 59 of the Complaint states legal conclusions to which no answer is
8 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
9 accurately characterized the law.

10 60. Paragraph 60 of the Complaint states legal conclusions to which no answer is
11 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
12 accurately characterized the law.

13 61. Paragraph 61 of the Complaint states legal conclusions to which no answer is
14 required. To the extent an answer is required, Defendant denies the allegations of this paragraph
15 of the Complaint.

16 62. Answering paragraph 62 of the Complaint, Defendant denies each and every
17 allegation contained therein.

18 63. Answering paragraph 63, which merely incorporates other paragraphs of the
19 Complaint by reference, Defendant refers to and incorporates by this reference paragraphs 1
20 through 62, of this Answer, as though set forth here.

21 64. Paragraph 64 of the Complaint states legal conclusions to which no answer is
22 required. To the extent an answer is required, Defendant denies that Plaintiffs have completely or
23 accurately characterized the law.

24 65. Answering paragraph 65 of the Complaint, Defendant denies each and every
25 allegation contained therein.

26 66. Answering paragraph 66 of the Complaint, Defendant denies each and every
27 allegation contained therein.
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67. Answering paragraph 67 of the Complaint, Defendant denies each and every allegation contained therein.

68. Answering paragraph 68 of the Complaint, Defendant denies each and every allegation contained therein.

RELIEF REQUESTED

69. Defendant respectfully requests that this Court dismiss Plaintiffs' Complaint in its entirety. Defendant further requests that this Court Order plaintiffs to remove all references to Defendant from their public and/or internal websites and to post this Court's Order on its website.

GENERAL DENIAL

Any and all allegations of the Complaint not herein above expressly admitted, denied, or otherwise answered are hereby denied.

SEPARATE AFFIRMATIVE DEFENSES

**FIRST AFFIRMATIVE DEFENSE
(Failure to State a Cause of Action)**

The Complaint, and each cause of action thereof, fails to state facts sufficient to constitute a cause of action against Defendant.

**SECOND AFFIRMATIVE DEFENSE
(Commodity Exchange Act)**

The entire Complaint, and each cause of action thereof, is barred because Defendant did not engage in any conduct in violation of the Commodity Exchange Act.

**THIRD AFFIRMATIVE DEFENSE
(California Corporations Code)**

The entire Complaint, and each cause of action thereof, is barred because Defendant did not engage in any conduct in violation of any provisions of the California Corporations Code.

**FOURTH AFFIRMATIVE DEFENSE
(Exemption)**

The entire Complaint, and each cause of action thereof, is barred because Defendant's conduct was exempt from regulation under the Commodity Exchange Act and California Corporations Code.

FIFTH AFFIRMATIVE DEFENSE
(Due Process)

Plaintiffs' conduct herein violated Defendant's Due Process Rights.

SIXTH AFFIRMATIVE DEFENSE
(Lack of Jurisdiction)

The entire Complaint, and each cause of action thereof, is barred because Plaintiffs do not have jurisdiction over the foreign exchange contracts at issue in this action.

SEVENTH AFFIRMATIVE DEFENSE
(Mistake)

To the extent, if any, that Defendant is otherwise liable under the Complaint, Defendant is excused by reason of mistake of fact and/or law.

EIGHTH AFFIRMATIVE DEFENSE
(Lack of *Scienter*)

The Complaint alleges violations which require a showing of *scienter*, but fails to demonstrate any such *scienter* on the part of Defendant.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Additional Defenses)

Defendant presently has insufficient knowledge or information on which to form a belief as to whether it has additional, as yet unstated, affirmative defenses available. Defendant therefore reserves its right to assert additional defenses rendered appropriate by further discovery or investigation.

WHEREFORE, Defendant prays for judgment as follows:

- That Plaintiffs take nothing by way of the Complaint;
- For Defendant's costs of suit;
- For Defendant's attorneys' fees if and to the extent permitted by law; and

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1 For such other and further relief as this Court may deem just and proper in the
2 circumstances.

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4 Dated: November __, 2005

THELEN REID & PRIEST LLP

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6 By 

7 EDWARD GARTENBERG

ALEXANDRA EPAND

8 ROBERT A. WEIKERT

Attorneys for Defendants

9 NATIONAL INVESTMENT CONSULTANTS, INC.,

10 PACIFIC BEST GROUP LTD, a.k.a. PACIFIC BEST

COMPANY LTD, a British Virgin Islands Corporation,

11 WEI M. TSE a.k.a. RAYMOND TSE, and for

12 Relief Defendant THERESA C. WONG
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